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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

SHARON JEAN SHUBIN,  
Plaintiff,

v.

UNIVERSAL VACATION CLUB et  
al.,  
Defendants.

2:22-cv-2748-RSWL-AGRx

**ORDER re:  
DEFENDANT UVC'S MOTION  
TO DISMISS [13]**

Sharon Jeanne Shubin ("Plaintiff") brings this Action against Universal Vacation Club ("Defendant UVC"), Villa Group Hotel and Resorts, S.A. de C.V. in Puerto Vallarta ("Villa Group"), and Villa del Arco Beach Resort and Spa Cabo San Lucas ("Villa del Arco" or the "Resort"), alleging: (1) negligence; and (2) breach of express and implied warranties. Currently before the Court is Defendant UVC's Motion to Dismiss ("Motion") [13].

1 Having reviewed all papers submitted pertaining to  
2 the Motion, the Court **NOW FINDS AND RULES AS FOLLOWS:**  
3 the Court **GRANTS** Defendant UVC's Motion.

4 **I. BACKGROUND**

5 **A. Factual Background**

6 Plaintiff alleges the following in her Complaint:

7 Plaintiff is an individual domiciled in Idaho.

8 Compl. ¶ 3, ECF No. 1. Defendant UVC is an  
9 international corporation which conducts business in  
10 California and is headquartered in Nevada. Id. ¶ 4.

11 Defendant UVC is a vacation ownership management  
12 company serving as the homeowners' association for the  
13 Resort. Id. The Resort is a timeshare hotel located in  
14 Cabo San Lucas, Mexico and is governed by Defendant  
15 Villa Group. Id. ¶ 5.

16 Plaintiff reserved a stay at the Resort for  
17 November 2019. Id. ¶¶ 8, 12. Upon her arrival,  
18 Plaintiff was shown to her suite, which was equipped  
19 with a heavy wall bed (the "Murphy Bed"), a bed  
20 containing lifting components that folds up into the  
21 wall when not in use. Id. ¶ 13. On November 25, 2019,  
22 Plaintiff was in her suite, lowering the Murphy Bed,  
23 when it fell out of the wall and landed on the lower  
24 part of her body. Id. ¶¶ 14-15.

25 As a result of the incident, Plaintiff sustained  
26 leg injuries and received medical services at both a  
27 hospital in Cabo San Lucas, Mexico and later in Boise,  
28 Idaho. Id. ¶¶ 19-24.

1 **B. Procedural Background**

2 Plaintiff filed her Complaint [1] in this Court on  
3 April 25, 2022, alleging: (1) negligence; and (2) breach  
4 of implied and express warranties.

5 Defendant UVC filed the instant Motion [13] on June  
6 3, 2022. Plaintiff filed her Opposition [17] on June  
7 14, 2022, and Defendant UVC replied [19] on June 21,  
8 2022.

9 **II. DISCUSSION**

10 **A. Legal Standard**

11 Federal Rule of Civil Procedure ("Rule") 12(b)(6)  
12 allows a party to move for dismissal on one or more  
13 claims if a pleading fails to state a claim upon which  
14 relief can be granted. Fed. R. Civ. P. 12(b)(6). Under  
15 Rule 8(a), a complaint must contain "a short and plain  
16 statement of the claim showing that the pleader is  
17 entitled to relief" to give the defendant "fair notice  
18 of what the . . . claim is and the grounds upon which it  
19 rests." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555  
20 (2007); see also Fed. R. Civ. P. 8(a). Dismissal is  
21 proper "where the complaint lacks a cognizable legal  
22 theory or sufficient facts to support a cognizable legal  
23 theory." Mendiondo v. Centinela Hosp. Med. Ctr., 521  
24 F.3d 1097, 1104 (9th Cir. 2008) (citing Balistreri v.  
25 Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir.  
26 1988)).

27 "To survive a motion to dismiss, a complaint must  
28 contain sufficient factual matter, accepted as true, to

1 'state a claim to relief that is plausible on its  
2 face.'" Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)  
3 (quoting Twombly, 550 U.S. at 570). While a complaint  
4 need not contain detailed factual allegations, it must  
5 provide more than "labels and conclusions" or "a  
6 formulaic recitation of the elements of a cause of  
7 action." Twombly, 550 U.S. at 555. The plaintiff must  
8 allege enough facts "to raise a right to relief above  
9 the speculative level." Id. In evaluating a Rule  
10 12(b)(6) motion, a court must take all well-pleaded  
11 allegations of material fact as true and construe them  
12 in the light most favorable to the nonmovant. Great  
13 Minds v. Off. Depot, Inc., 945 F.3d 1106, 1109 (9th Cir.  
14 2019). A court may generally consider only "the  
15 complaint itself and its attached exhibits, documents  
16 incorporated by reference, and matters properly subject  
17 to judicial notice." In re NVIDIA Corp. Sec. Litig.,  
18 768 F.3d 1046, 1051 (9th Cir. 2014).

19 **B. Discussion**

20 Defendant UVC argues that the Complaint should be  
21 dismissed in its entirety because it is barred by the  
22 applicable statute of limitations. Mot. to Dismiss  
23 ("Mot.") 4:4-7, ECF No. 13. Defendant UVC additionally  
24 argues that dismissal is warranted because Plaintiff's  
25 claims are inadequately pled. Id. at 5:3-7:15. The  
26 Court finds that: (1) Plaintiff's negligence claim is  
27 barred by the applicable statute of limitations; and (2)  
28 Plaintiff's claims for breach of implied and express

1 warranties are inadequately pled. The Court therefore  
2 **GRANTS** Defendant UVC's Motion and need not discuss  
3 Plaintiff's request for attorneys' fees.

4 1. Plaintiff's Negligence Claim is Time-Barred by  
5 the Statute of Limitations Set Forth in Article  
6 1934 of the Mexican Civil Code

7 In diversity cases, federal courts must apply the  
8 choice-of-law rules of the forum state. Ledesma v. Jack  
9 Steward Produce, Inc., 816 F.2d 482, 484 (9th Cir.  
10 1987). Because the present case is a diversity action  
11 and the Court is in California, California's choice-of-  
12 law rules apply. See id.

13 Under California's choice-of-law rules, where a  
14 cause of action arises in a foreign country, and the  
15 action is time-barred under the laws of the foreign  
16 country, such action cannot be brought in California  
17 unless brought by a California citizen who has held the  
18 cause of action from the time it accrued. Cal. Civ.  
19 Proc. Code § 361 (West 2022). Here, Plaintiff is an  
20 Idaho resident and her cause of action stems from  
21 alleged incidents that occurred in Cabo San Lucas,  
22 Mexico. Compl. 2:6-9, ¶ 3. As such, because Plaintiff  
23 is not a California citizen, Plaintiff may only bring  
24 this lawsuit in California if permitted under the laws  
25 of Mexico.

26 Under Mexican law, the statute of limitations for  
27 tort actions, such as the negligence claim here, is two  
28 years from the date the alleged injury occurred. Código

1 Civil [CC], art. 1934, Diario Oficial de la Federación  
 2 [DOF] 26-05-1928, últimas reformas DOF 24-12-2013; see  
 3 also Banco De Mex. V. Orient Fisheries, Inc., 680 F.  
 4 Supp. 2d 1132, 1145 (C.D. Cal. 2010). Plaintiff's  
 5 injuries stem from an incident that occurred on November  
 6 25, 2019. Compl. 2:6-9. Thus, the statute of  
 7 limitations for Plaintiff's negligence claim ran on  
 8 November 25, 2021. However, Plaintiff did not file this  
 9 Action until April 25, 2022. Id. Because Plaintiff did  
 10 not timely file her Complaint, her negligence claim is  
 11 time-barred, and this Court **DISMISSES** Plaintiff's  
 12 negligence claim. Cf. G & G Prods. LLC v. Rusic, 902  
 13 F.3d 940, 947 (9th Cir. 2018).

14 a. California Emergency Rule 9 Does Not Apply  
 15 to Save Plaintiff's Negligence Claim from  
 16 Dismissal

17 To avoid dismissal, Plaintiff asks this Court to  
 18 apply California's Emergency Rule 9. Opp'n 2:1-5, ECF  
 19 No. 17. The California Judicial Council adopted the  
 20 Emergency Rules on April 6, 2020, in light of the COVID-  
 21 19 pandemic. See Cal. Rules of Court, Emergency Rule 9.  
 22 In particular, Emergency Rule 9 tolled the statute of  
 23 limitations on the commencement of civil causes of  
 24 action brought in California courts.<sup>1</sup> Id. Statutes of

25 <sup>1</sup> Emergency Rule 9 states, in relevant part:  
 26 "Notwithstanding any other law, the statutes of limitations and  
 27 repose for civil causes of action that exceed 180 days are tolled  
 28 from April 6, 2020, until October 1, 2020." Cal. Rules of Court,  
 Emergency Rule 9. Although Emergency Rule 9 "is intended to  
 apply broadly," it is unclear whether it applies in federal

1 limitations exceeding 180 days were tolled between April  
2 6, 2020 and October 1, 2020. Id. (as amended May 29,  
3 2020). Thus, if applied to this Action, Emergency Rule  
4 9 would make Plaintiff's April 25, 2022 filing timely.

5 The application of Emergency Rule 9 to a diversity  
6 case in federal court presents a novel issue.

7 California federal courts have been hesitant to apply  
8 Emergency Rule 9, at least in cases exercising federal  
9 question jurisdiction. See Goerss v. Pac. Gas & Elec.  
10 Co., No. 21-CV-04485-EMC, 2021 WL 4932134, at \*6 (N.D.  
11 Cal. Oct. 18, 2021) (holding that plaintiff could "not  
12 rely on the California-issued emergency rule . . .

13 because she [wa]s not in state court"); Harris v.

14 Restivo, No. 120VC00797EPGPC, 2020 WL 5439980, at \*8,  
15 n.3 (E.D. Cal. September 10, 2020) ("It is not clear

16 that [Emergency Rule 9] would apply to this federal  
17 action."); Sholes v. Cates, No. 121CV01006DADHBK, 2021  
18 WL 5567381, at \*5 (E.D. Cal. Nov. 29, 2021) (finding

19 Emergency Rule 9 inapplicable to a federal habeas  
20 claim). This hesitancy in part stems from the fact that  
21 Emergency Rule 9 was issued by the California Judicial  
22 Council, and not any federal court or body. Goerss,  
23 2021 WL 4932134, at \*4; see also Sholes, 2021 WL  
24 5567381, at \*5 ("Emergency Rule 9 was promulgated . . .  
25 to toll the statute of limitations for civil causes of  
26 action in matters brought before California state

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27 diversity cases. Cal. Rules of Court, Emergency Rule 9, Advisory  
28 Comm. Comment.

1 courts.") (emphasis added). For the following two  
2 reasons, the Court similarly declines to apply Emergency  
3 Rule 9 to the diversity action here.

4 First, because California's choice-of-law rules  
5 mandate that the Mexican statute of limitations applies  
6 to Plaintiff's negligence claim, a California tolling  
7 provision cannot be extended to these circumstances.  
8 Indeed, Plaintiff does not argue that Emergency Rule 9  
9 should be applied to the Mexican statute of limitations.  
10 Plaintiff instead asks this Court to apply the  
11 California statute of limitations in the first place,  
12 altogether disregarding the choice-of-law rules set  
13 forth in Section 361 of the California Code of Civil  
14 Procedure. Opp'n 1:12-28. But because this Court sits  
15 in diversity and Plaintiff is an Idaho resident, the  
16 Court applies Section 361 and thereby applies the  
17 Mexican statute of limitations *without* the California  
18 tolling rule. See Hatfield v. Halifax PLC, 564 F.3d  
19 1177, 1189-90 (9th Cir. 2009) (finding that non-  
20 residents "certainly should not be permitted to take  
21 advantage of the state's tolling doctrine" when their  
22 claims are time-barred under Section 361); see also G &  
23 G Prods., 902 F.3d at 946-47 (internal quotations and  
24 citation omitted) ("[A]s a matter of policy, there is no  
25 sound reason why a[] [plaintiff] should be entitled to  
26 recover in the forum if his action has been fully barred  
27 by the law of the [forum] in which it arose.").



1       Second, no evidence indicates that Plaintiff needed  
2 additional time to file this Action due to the COVID-19  
3 pandemic, so the circumstances do not warrant  
4 application of the equitable tolling provision. Because  
5 Emergency Rule 9 was promulgated in response to  
6 difficulties resulting from the COVID-19 pandemic,  
7 courts determining the application of Emergency Rule 9  
8 have considered whether a plaintiff faced any  
9 extraordinary circumstances due to COVID-19 that  
10 prevented the timely filing of their lawsuit. See  
11 Goerss, 2021 WL 4932134, at \*4 (holding that, to rely on  
12 Emergency Rule 9, plaintiff "would have to explain how  
13 the pandemic could justify her not filing" in time);  
14 Sholes, 2021 WL 5567381, at \*5 (finding Emergency Rule 9  
15 inapplicable where plaintiff failed to demonstrate "that  
16 the reasons he cite[d] [for applying Emergency Rule 9]  
17 constitute[d] extraordinary circumstances"). Here,  
18 Plaintiff has not alleged that the COVID-19 pandemic  
19 impeded her ability to file her claims in a timely  
20 manner, nor has she pled any other extraordinary  
21 circumstances that warrant application of the Emergency  
22 Rule 9 equitable tolling provision.

23       In sum, the Court finds that California Emergency  
24 Rule 9 does not apply to toll the statute of limitations  
25 on Plaintiff's negligence claim here. The Court  
26 therefore **GRANTS** Defendant UVC's Motion as to  
27 Plaintiff's negligence claim.

28     ///

1           2.   Plaintiff's Breach of Warranty Claims are  
2               Inadequately Pled<sup>2</sup>

3           Plaintiff additionally brings claims for breach of  
4 implied and express warranties. Both claims are  
5 inadequately pled and warrant dismissal for the reasons  
6 below.

7           a.   Breach of Implied Warranty

8           In arguing that there "was a warranty that the  
9 furniture in [Plaintiff's] room was fit for use and  
10 occupation," Plaintiff appears to invoke the implied  
11 warranty of habitability. See Opp'n 8:4-6. To state a  
12 claim for breach of the implied warranty of  
13 habitability, a plaintiff must show: (1) the existence  
14 of a materially defective condition affecting  
15 habitability; (2) notice to the landlord of the  
16 condition within a reasonable time after the tenant's  
17 discovery of the condition; and (3) the landlord was  
18 given a reasonable time to correct the deficiency and  
19 resulting damages. Ghazaryan v. Shabazian, No.  
20 LACV1708245JAKSSX, 2018 WL 6190347, at \*5 (C.D. Cal.  
21 Aug. 2, 2018) (citing Erlach v. Sierra Asset Servicing,  
22 LLC, 226 Cal. App. 4th 1281, 1297 (2014)).

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23  
24           <sup>2</sup> While Defendant UVC has shown that the two-year Mexican statute  
25 of limitations applies to any tort claims brought by Plaintiff, it is  
26 unclear whether the same limitations period applies to Plaintiff's  
27 breach of warranty claims. For this reason, the Court declines to  
28 extend the two-year Mexican statute of limitations to Plaintiff's  
breach of warranty claims at this time. Instead, the Court analyzes  
Plaintiff's breach of warranty claims under the 12(b)(6) pleading  
standard.

1 Wholly absent from Plaintiff's Complaint is any  
2 discussion of these elements. Instead, Plaintiff only  
3 argues, in a conclusory fashion, that because she was  
4 provided with a hotel room, Defendant UVC impliedly  
5 warranted the safety and fitness of the room. See  
6 Compl. ¶ 37. This is insufficient to overcome dismissal  
7 under 12(b)(6). See Twombly, 550 U.S. at 555 (noting  
8 that to survive dismissal, a complaint must contain  
9 "more than labels and conclusions" or "a formulaic  
10 recitation of the elements of a cause of action").

11 Plaintiff also fails to allege that a landlord-  
12 tenant relationship existed between herself and  
13 Defendant UVC to trigger the implied warranty of  
14 habitability in the first place. See Ghazaryan, 2018 WL  
15 6190347, at \*4 (noting that a tenant may state a cause  
16 of action against his landlord for damages resulting  
17 from a breach of the implied warranty of habitability).  
18 Again, the only allegations Plaintiff brings to support  
19 her breach of implied warranty claim are that she was  
20 provided with a hotel room at the Resort, and the hotel  
21 "affirmed" that the Murphy Bed was not defective. See  
22 Opp'n 8:14-16. Besides broad, conclusory allegations  
23 that an implied warranty indeed existed between  
24 Plaintiff and Defendant UVC and that Defendant UVC  
25 breached said warranty, Plaintiff has not pled facts "to  
26 raise a right to relief above [a] speculative level."  
27 See Twombly, 550 U.S. at 555. The Court therefore  
28 **DISMISSES** Plaintiff's breach of implied warranty claim.

1           b. Breach of Express Warranty

2           Similarly deficient is Plaintiff's breach of  
3 express warranty claim. "In order to plead a cause of  
4 action for breach of express warranty, one must allege  
5 the exact terms of the warranty, plaintiff's reasonable  
6 reliance thereon, and a breach of that warranty which  
7 proximately causes plaintiff injury." Watkins v. MGA  
8 Ent., Inc., 550 F. Supp. 3d 815, 830 (N.D. Cal. 2021)  
9 (internal quotation marks and citations omitted). "To  
10 adequately allege the exact terms of an express  
11 warranty, a plaintiff must identify a specific and  
12 unequivocal written statement relating to the title,  
13 character, quality, identity, or condition of the sold  
14 goods." Id. (internal quotation marks and citations  
15 omitted).

16           Plaintiff fails to state a claim for breach of  
17 express warranty. Beyond broadly alleging that an  
18 express warranty existed between herself and Defendant  
19 UVC, Plaintiff has not stated the exact terms of the  
20 warranty, nor has she identified a specific written  
21 statement relating to the warranted condition of her  
22 hotel room. Plaintiff states only that Defendant UVC  
23 "expressly . . . warranted that . . . the Resort would .  
24 . . be in good condition and would be reasonably safe  
25 from dangerous conditions such as the collapsing Murphy  
26 Bed . . . ." Compl. ¶ 36. Perhaps sensing that her  
27 breach of express warranty claim is speculative,  
28 Plaintiff further refers to a case from 1888 to argue

1 that a warranty, whether implied or express, may exist  
2 between a hotel and its patrons even if the word  
3 "warranty" is not explicitly used in conversation between  
4 the parties. Id. ¶ 35. This is beside the point.  
5 Again, Plaintiff has neither shown that Defendant UVC  
6 expressly warranted the safety of Plaintiff's hotel  
7 room, nor identified any terms of such warranty.  
8 Accordingly, Plaintiff has not adequately pled her  
9 breach of express warranty claim, and this Court  
10 **DISMISSES** the claim.

11 c. Leave to Amend

12 "The court should give leave [to amend] freely when  
13 justice so requires." Fed. R. Civ. P. 15(a)(2). In the  
14 Ninth Circuit, "Rule 15's policy of favoring amendments  
15 to pleadings should be applied with 'extreme  
16 liberality.'" United States v. Webb, 655 F.2d 977, 979  
17 (9th Cir. 1981). Against this liberal standard, the  
18 Court may consider "the presence of any of four factors:  
19 bad faith, undue delay, prejudice to the opposing party,  
20 and/or futility." Owens v. Kaiser Found. Health Plan,  
21 Inc., 244 F.3d 708, 712 (9th Cir. 2001).

22 Given that Plaintiff's negligence claim is time-  
23 barred, amendment would be futile. The Court thus  
24 **DISMISSES** Plaintiff's negligence claim **without leave to**  
25 **amend.** See Djukich v. AutoNation Inc., No.  
26 CV1304455BROAGRX, 2013 WL 12372182, at \*3 (C.D. Cal.  
27 Oct. 11, 2013) (dismissing time-barred claims with  
28 prejudice because repleading the claims would have been

1 futile).

2 As for Plaintiff's remaining breach of warranty  
3 claims, the Court gives Plaintiff leave to amend  
4 considering Rule 15's extremely liberal standard. For  
5 the sake of clarity, the Court **GRANTS** leave to amend as  
6 to Plaintiff's breach of implied warranty and breach of  
7 express warranty claims only.

### 8 **III. CONCLUSION**

9 Based on the foregoing, the Court **GRANTS** Defendant  
10 UVC's Motion to Dismiss. The Court notes that this  
11 Motion was brought only by Defendant UVC and therefore  
12 the disposition of this Order has no bearing on  
13 Defendants Villa Group and Villa del Arco. Plaintiff's  
14 negligence claim is **DISMISSED without leave to amend**.  
15 Plaintiff's breach of implied and express warranty  
16 claims are **DISMISSED with leave to amend**. Plaintiff may  
17 file a First Amended Complaint to cure the deficiencies  
18 outlined above within thirty (30) days of this Order.

19 **IT IS SO ORDERED.**

20  
21  
22  
23 DATED: August 18, 2022

/s/ Ronald S.W. Lew

24 **HONORABLE RONALD S.W. LEW**  
25 Senior U.S. District Judge  
26  
27  
28